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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,195	04/12/2004	Wayne Clifton Augustus Wright	1182-24	4040

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EXAMINER

NGUYEN, XUAN LAN T

ART UNIT	PAPER NUMBER
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3683

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/823,195	<b>Applicant(s)</b> WRIGHT ET AL.	
	<b>Examiner</b> Lan Nguyen	<b>Art Unit</b> 3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22,23,25-32 and 34-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22,23,25-32 and 34-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/581,378.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 36, 40-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 36 is believed to be depending on claim 32 instead of claim 23. Claim 36 is being treated as depending on claim 32.
- Claim 40 is a repeating claim of claim 22. Except for where claim 40 claims "a sump chamber wall" in lines 2 and 3; and where claim 22 claims "a manhole chamber wall" in lines 2 and 3, the two claims are identical. Since both claims recite the phrase "adapted for use" in the preamble, the recited features of "a sump chamber wall" in claim 40; and "a manhole chamber wall" in claim 22 are considered as intended use and have not been positively claimed. Hence, the bodies of both claims are identical.
- Claims 41-48 are exact duplicates of claims 23 and 25-31.
- Claim 49 is a repeating claim of claim 32. Except for where claim 49 claims "a sump chamber wall" in line 2; and where claim 32 claims "a manhole chamber wall" in line 2, the two claims are identical. Since both claims recite the phrase "adapted for use" in the preamble, the recited features of "a sump chamber wall"

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in claim 49; and "a manhole chamber wall" in claim 32 are considered as have not been positively claimed. Hence, the bodies of both claims are identical.

- Claims 50-53 are exact duplicates of claims 33-37.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22, 23, 25-32, 34-37 and 40-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gavin (USP 5,655,564) in view of Evans.

Re: claims 22, 25-27, 29, 40, 42-44, 46, 50, 54 and 55, Gavin shows a fitting 130 for providing a substantially fluid-tight seal between an opening in a chamber wall 102 and a pipe 156 passing through said opening, as in the present invention in figures 7-11, said fitting comprising: a tubular sleeve 146 passing through the opening with pipe 156 passing through said sleeve; a rigid, flat and planar flange 140 extending radially from said sleeve, a first surface 138 of the flange being configured to contact the chamber wall around substantially the whole circumference of the opening and over substantially the whole first surface of the flange; an energy means ... to heat the first surface of the flange in order to form a substantially fluid tight seal between the wall and the flange, column 6, lines 44-46; wherein said sleeve is extending from both sides of

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said flange, said flange can be positioned either outside or inside of said wall, see figures 7-11; and said fitting is adapted to have at least one rubber boot seal 164 mounted to it. Note the phrase "adapted for use" in the preamble is considered as an intended use only. Gavin's fitting is capable of being adapted to providing a seal as claimed. Gavin's fitting is silent of an energy transfer means. Evans shows in figure 4 energy transfer means 24, 26, 21 for conducting an electric current; where 21 is the heating wire being embedded in the first surface of flange 16; and 24, 26 are the terminals. Evans further teaches in the Abstract the material for use as a heat activated adhesive to be a thermoplastic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated Evans teaching of the use of a thermoplastic material being activated by a current to provide a tight adhesion between the flange and the wall of Gavin's system; since heat activated thermoplastic materials are well known to provide uniform and effective fluid tight sealing means as taught by Evans.

Re: claims 23 and 41, see column 6, line 23 of Gavin.

Re: claims 28 and 45, Gavin shows the sleeve is of a circular cross section and the flange is radial.

Re: claims 30, 31, 47 and 48, Gavin shows sealing member 164 to be resilient and is providing a fluid tight connection between the sleeve and the pipe wherein sealing member 164 is mounting over tubular extension 160 of the tubular sleeve 146.

Re: claims 32 and 49, Gavin shows a method of forming a seal between an opening in a chamber wall and a pipe passing through said opening, as in the present

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invention, the method comprising the steps of: applying a fitting to the pipe, said fitting comprising: a tubular sleeve 146 passing through the opening with pipe 156 passing through said sleeve; a flange 140 extending radially from said sleeve, a first surface 138 of the flange being configured to contact the chamber wall around substantially the whole circumference of the opening and over substantially the whole first surface of the flange; an energy means ... to heat the first surface of the flange in order to form a substantially fluid tight seal between the wall and the flange, column 6, lines 44-46; wherein said sleeve is extending from both sides of said flange, said flange can be positioned either outside or inside of said wall, see figures 7-11; applying energy to the energy transfer means to cause the wall and the flange to fuse together, see column 6, line 23, applying a sealing member 164 to form a fluid tight connection between the sleeve and the pipe. Note the phrase "adapted for use" in the preamble is considered as not having positively claiming. Gavin's method is capable of being adapted to providing a seal as claimed. Gavin's method is silent of an energy transfer means. Evans shows in figure 4 energy transfer means 24, 26, 21 for conducting an electric current; where 21 is the heating wire being embedded in the first surface of flange 16; and 24, 26 are the terminals. Evans further teaches in the Abstract the material for use as a heat activated adhesive to be a thermoplastic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated Evans teaching of the use of a thermoplastic material being activated by a current to provide a tight adhesion between the flange and the wall of Gavin's method;

since heat activated thermoplastic materials are well known to provide uniform and effective fluid tight sealing means as taught by Evans.

Re: claim 34, see column 6, line 23 of Gavin.

Re: claims 35, 36, 51 and 52, see column 6, line 30 of Gavin.

Re: claims 37 and 53, see Abstract, lines 1 and 2 of Gavin. Note that Gavin's system is of a subterranean wastewater transport system and would be capable of other subterranean fluid transport system such as fuel tanks.

5. Claims 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gavin (USP 5,655,564) in view of the instant application's description on page 7, lines 7-9, and further in view of Evans.

Gavin shows a fitting 130 for providing a substantially fluid-tight seal between an opening in a chamber wall 102 and a pipe 156 passing through said opening, as in the present invention in figures 7-11, said fitting comprising: a tubular sleeve 146 passing through the opening with pipe 156 passing through said sleeve; a rigid, flat and planar flange 140 extending radially from said sleeve, a first surface 138 of the flange being configured to contact the chamber wall around substantially the whole circumference of the opening and over substantially the whole first surface of the flange; an energy means ... to heat the first surface of the flange in order to form a substantially fluid tight seal between the wall and the flange, column 6, lines 44-46; wherein said sleeve is extending from both sides of said flange, said flange can be positioned either outside or inside of said wall, see figures 7-11. Gavin lacks the environments of the fuel tank and a sump chamber for the fitting to be installed in. In the instant application, page 7, lines

7-9, manhole, chambers and tanks are considered to be art equivalent of tanks in general. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used Gavin's fitting in different art recognized equal environments to provide fluid tight sealing between an opening in the tank and a pipe since the fitting would perform the same way and accomplish the same task of providing a fluid tight seal in these art recognized equal environments. Gavin's fitting as modified is silent of an energy transfer means. Evans shows in figure 4 energy transfer means 24, 26, 21 for conducting an electric current; where 21 is the heating wire being embedded in the first surface of flange 16; and 24, 26 are the terminals. Evans further teaches in the Abstract the material for use as a heat activated adhesive to be a thermoplastic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further incorporated Evans teaching of the use of a thermoplastic material being activated by a current to provide a tight adhesion between the flange and the wall of Gavin's system; since heat activated thermoplastic materials are well known to provide uniform and effective fluid tight sealing means as taught by Evans.

### ***Response to Arguments***

6. Applicant's arguments filed 12/5/06 have been fully considered but they are not persuasive. Applicant argues about the 112, 2<sup>nd</sup> paragraph rejections of claims 40-53, wherein Applicant states "With respect to the Examiner's position as to certain claims being repeats of other claims except for some "preamble language", it should be noted



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that the "preamble language" gives import to the subsequently defined elements and therefore it is believed that it is a limitation which should be considered by the Examiner when considering these claims. This is particularly true of the method claims which specifically refer to the specific elements on which certain steps are to be performed." As stated above, the claims recite the phrase "adapted for use"; hence, the claims are being treated as not having positively claiming. Furthermore, Gavin's fitting is capable of being used in those environments since Gavin's fitting, as modified, meets the claimed limitations as stated above.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Nguyen whose telephone number is (571) 272-7121. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on (571) 272-6786. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lan Nguyen  
Primary Examiner  
Art Unit 3683

 2/13/06